

BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION
ACT OF 2001

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS
FIRST SESSION

ON

S. 350, A BILL TO AMEND THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 TO PROMOTE
THE CLEANUP AND REUSE OF BROWNFIELDS, TO PROVIDE FINANCIAL
ASSISTANCE FOR BROWNFIELDS REVITALIZATION, TO ENHANCE STATE
RESPONSE PROGRAMS, AND FOR OTHER PURPOSES

FEBRUARY 27, 2001

Senator Chafee. Thank you, Senator Inhofe.
Senator Carper.

OPENING STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Thank you very much, Mr. Chairman. To my colleagues, good morning.

Governor, good morning. A year ago, we were in Washington together just wrapping up a National Governors' Association meeting. You have been in your new job for almost a month. How are you doing?

Administrator Whitman. I am surviving. Still here.

Senator Carper. Good. I caught a train to come down this morning, as I often do, and as the train pulled out of the Wilmington train station heading South, I looked out my left window, as I often do, at an area where during World War II 10,000 people worked to build the ships that helped win World War II. They built destroyer escorts, troop landing ships, all kinds of ships, hundreds of them. The day the war ended we had 10,000 people working there and a few years later we had almost nobody working there. That area went

to seed and for almost 45, 50 years decayed. Little was done with it. It looked awful. It ran right along the Christina River, a potentially lovely area. But nothing much happened to it.

Several years ago our State legislature passed and I signed brownfields legislation which we used to go in there and to turn just a waste dump into a place that is lovely. We have parks there, we have museums there, restaurants there, the winningest minor league baseball team in America plays baseball there, we have a shipyard, shops, home of tax free shopping in Delaware, and it has turned into quite a lovely river front redevelopment. We stole some ideas from Rhode Island, the folks over in Providence, Mr. Chairman, and some others that are represented here that I think will actually be testifying later.

But the long and short of it is we do not have much land in Delaware. We have a lot more than Rhode Island.

[Laughter.]

Senator Chafee. Not a lot more.

[Laughter.]

Senator Carper. A little more. But what we do have we have to use pretty carefully and judiciously. So by going back and taking some areas like the area along the Christina River and turning it into something useful and beautiful, we reclaim that land. And, frankly, it is farmland and other land where we are now growing soybeans and corn and other natural life that can carry on just as it is and continue to be lovely and beautiful and unspoiled.

I want to thank both Senator Chafee and Senator Boxer and others who have been working on this for a while. I was not around here last year to be involved in this. But I am happy to be able to play a little part now and to be a cosponsor of this legislation.

Our friend George Voinovich, who chaired the NGA when I was vice chairman, Senator Voinovich has offered legislation I think in the last session, I do not know if he has done it this time, that has some pretty good ideas in it. My hope is that, as we come down toward the home stretch in a couple of months, we can find some elements of his bill to incorporate into elements of this bill which many of us have cosponsored. I particularly want to point to the provisions in the Voinovich bill in the last session which addressed finality. That is, the notion that when somebody comes in and takes over a piece of land that is not being used, in fact, it has been misused, that if they were willing to do that, in the end they would be given some flexibility to clean it up, States and local governments are given some flexibility to help that clean up. But in the end, there actually is a conclusion and that the finality of the State's certification of brownfield clean-up actually means something, and its prohibition of a site being included on the National Priority List without the concurrence of the Governor of the State where the site is located means something as well. That having been said, Mr. Chairman, I want to ask that my entire statement be entered into the record as is. I thank you all for this opportunity. And again, Governor, welcome. It is great to see you. Thank you, Mr. Chairman.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE
OF DELAWARE

I thank the chair for the opportunity, and I would like to welcome Governor Whitman this morning, and the other distinguished witnesses. I look forward to hearing your thoughts about the brownfields legislation before us.

This morning, as I do every morning, I rode on Amtrak from my home in Wilmington Delaware to Washington DC. I know, Governor Whitman, that you have passed through Wilmington on the train a few times, and that probably many of you here have done the same. Each time I ride the train, I look out the window as it pulls away and take a few minutes to marvel at the Wilmington Riverfront. Ten years ago, the view was significantly different.

As Delaware's Governor, I signed legislation aimed at revitalizing industrial brownfields. My administration worked closely with the Riverfront Development Corporation in Wilmington. They received \$55 million to acquire, investigate, and redevelop sites, and partially as a result of their effort, 92 contaminated sites have been cleaned up and determined to no longer pose environmental threats to Delaware. We have drawn new investment to the city's waterfront, and we recently opened a new riverwalk connecting the train station to our baseball stadium. Shops, and restaurants are opening in a region some thought of as the worst in the city. Once a prime example of post-industrial urban blight, Wilmington's new waterfront has become a catalyst for 21st century urban renewal.

The benefits to Delaware from cleaning up and revitalizing brownfield sites are numerous, more than 500 jobs and 50 business created, increased tax revenues, 266 apartments for University of Delaware students, 3 new school sites, and several parks and recreational areas.

I am excited to be a co-sponsor of the bill introduced by Senators Chafee and Boxer, and I think it is a good start. As I rookie on this committee, I enter this debate a little late and I was not around last year while much of the work to develop this language went on, but I commend those who were at the table for their efforts. I would like to make a couple of points.

First, I support efforts to clean up and re-use brownfields and the discussion this bill generates will help us along. Second, I fully support the provisions that release prospective purchasers from liability for clean-up, and authorize funds for State and local brownfield clean-up programs. Let me also say that I am encouraged to see that the bill provides authority to States and local governments to conduct voluntary clean-up programs and authorizes funds needed to do so. This should not be an unfunded mandate. As a former Governor, I want to make certain that as we move to strengthen the brownfields program, States and local governments are given the authority and flexibility to conduct effective brownfield programs. States and local governments must be able to assure property owners and prospective purchasers that they will not be held liable for mistakes that were not their fault, and encourage them to reuse these sites which are often in very desirable locations close to critical existing infrastructure. Each brownfield acre we can use downtown can prevent an acre of farmland from being developed.

Mr Chairman, there are two guiding philosophies, born of my 8 years as a Governor, that will guide me in my service to this committee and to the Senate. First, I believe the Federal Government should recognize the ability of State and local governments to make good, sound decisions and hold them accountable. We should not forget in Washington, DC, that the citizens and officials of States like Delaware, or California, or Rhode Island,

live with the consequences of their decisions. We should help them to make good decisions for themselves before we make decisions for them.

Second rather than just dictating strict Federal standards, the Federal Government should whenever possible strive to provide States the flexibility and support to meet those standards. In Delaware, I saw time and time again that when people were shown why a change or program was needed and given the flexibility to develop the mechanism to achieve that change, they developed effective programs--often using less time and less expense than if they had been forced to follow a government recipe. There are times flexibility is not appropriate, but in many cases, it may be the right thing to do.

When I was vice-chairman of the National Governors' Association, our chair was my friend from Ohio, Governor Voinovich, who sits on this committee. Last year he introduced S. 2590, a bill that is similar in many ways to S. 350 and yet also incorporates elements that vest more responsibility and flexibility with State and local governments. As we move forward on this bill, I am interested in working with my friend from Ohio and with the chair and ranking member to see if we can incorporate some of the provisions of S. 2590 without upsetting the careful balance of support that S. 350 enjoys.

I know that the NGA has expressed support for some elements of Senator Chafee's bill, while also commending some of the provisions in Senator Voinovich's bill as well. In particular, they support its stronger language on the finality of a State's certification of a brownfield clean-up, and its prohibition of a site being included on the National Priority list without the concurrence of the Governor of the State where the site is located. As I said, I think that S. 350 is a good start, and I support its introduction. However, I think that just might be a few things we can do to make it even stronger, perhaps including a few of the provisions of the gentleman from Ohio. I haven't made up my mind however, and I look forward to today's discussion and will take it into consideration.

Thank you Mr. Chairman.

Administrator Whitman. Thank you. Good to see you, as always.

Senator Chafee. Thank you, Senator Carper.

Senator Clinton: ... Senator Carper and Senator Corzine and Governor Whitman and I all come from a position of seeing a lot of brownfields in the States that we represent. It is an issue that is of grave concern to many of my constituents because we have the effects of all the industrialization that Senator Carper referred to that really helped build America, that made us the great industrial economy and now turning into the information economy that we are. We cannot just walk away from that past and expect that we will be able to reap future economic benefits and protect our environment. That is why brownfields revitalization makes such good sense, both good economic sense and good environmental sense. ...

Senator Crapo: ... I actually found a lot of hope in the fact that Senator Carper suggested that maybe the language out of Senator Voinovich's bill would be acceptable. Senator Voinovich in his legislation has proposed a section on State finality which is very acceptable. It basically provides, as I have said, that if the State asks for help, the EPA can come in; if new evidence comes forward, the EPA can come in; if the EPA can establish, it does not even have to establish, it has to simply make a finding that the State

is unwilling or unable to do the job, the EPA can come in. So perhaps what we need to do is simply agree among ourselves that there does need to be a safety net, but it needs to truly be a safety net instead of a second bite at the apple by a Federal regulator. ...

Senator Crapo: ... Hopefully, we will be able to find some common ground here. I would not want anybody on the other side to think that we are saying that the States should simply have the ability to thumb their nose at the EPA. The question here is whether the EPA has its ability to thumb its nose at the States. Hopefully, we will be able to find some common ground. Again I say I was very heartened to hear Senator Carper indicate that maybe he has found that common ground in Senator Voinovich's bill. Something like that which really does put a true safety net in place but requires the EPA, if it cannot make some of those findings, to acknowledge the role of the States in this process is what we are hoping to find. Thank you. ...

Senator Chafee. Thank you, Governor.

Senator Carper.

Senator Carper. Thanks very much. When I was out of the room for a moment I understand Senator Crapo alluded to some comments that I made. I think our chairman and ranking member of the subcommittee have worked real hard to try to come up with a careful balance here and I sure hope we can keep it. I am interested, as I said earlier, in working with you and Senator Voinovich and others to focus particularly on the finality issue. But I realize that this is a tricky one and we have got to just keep that in mind as we come to it.

Let me come back, Governor Whitman, to the issue of finality. I am going to ask you if you can help me with some specifics. If you can, I would appreciate it. What specifically would EPA need to receive in order to reopen a brownfield site with respect to litigation, the sites that had previously been certified by both the State and by EPA?

Administrator Whitman. Well, it would be a clear indication that the clean-up at the site is no longer protective of human health and the environment, that it warranted further remediation. The chairman can give me the specific language again, I do not have it in front of me, but it is fairly specific, shall we say, as to what would be required to have EPA come in. It is an issue that, as I indicated to Senator Crapo, concerned me when I first saw it because, from the Governor's perspective, it appeared to be wide open. But on further examination of the language, it seems to me that there is a pretty high threshold here that would have to be met in order to have the Environmental Protection Agency come in unrequested by the States. It would be something that would truly pose an imminent threat to health and provide an imminent threat to human health or the environment.

Senator Carper. Thank you. That is helpful. The bill that we are discussing today, that we are holding this hearing on, does not require, as I recall, a Governor to concur with the EPA Administrator before a site could be listed on the Federal Superfund list. Let me just ask you as a former Governor and now as EPA Administrator, how do you feel about that provision?

Administrator Whitman. When we are talking Superfund sites, that is a whole different set of legislative criteria and programmatic criteria. That is not something that I would like to see hold up this legislation, as I indicated. We in New Jersey have more Superfund

sites than any other State in the Nation; unfortunately, we have that distinction. We were at times trying to get sites off of Superfund into brownfield because we could clean them up and because Superfund was taking too long and was too difficult and too expensive and we did not see the kind of remediation that we felt was necessary.

But it is clear that there are times when the Federal Government has a role to play here and Superfund sites are at a very different level from the brownfield sites. That is an important thing to remember as you look at this legislation and look at the nexus between Superfund and brownfields. We are talking about a very different level of contamination and that is in and of itself very significant.

Senator Carper. The last question I have, you said just a moment ago that New Jersey leads the Nation in Superfund sites.

Administrator Whitman. Unfortunately.

Senator Carper. I have heard that any number of times. Does New Jersey also lead the Nation in Superfund sites that have been cleaned up, remediated?

Administrator Whitman. I think we are probably at the top. We have done a pretty good job. We have been working with our Federal partners. We may not be a No. 1, I cannot absolutely tell you that, but if not, we are right up there, we are No. 2.

Senator Carper. All right. Thanks very much.

Senator Chafee. Thank you. Any further questions?

Senator Clinton. Mr. Chairman, could I ask one followup question to something Senator Carper said with respect to the imminent threat to health?

Senator Chafee. Certainly.

Senator Clinton. Just on a practical basis, if I go back to my Elmira school situation, and, again, we are not dealing in the realm of fact yet, we are just dealing in the realm of concern, would it be an imminent threat to health if it were thought that there were long term health damage that could occur under certain circumstances, or are we talking about something that is so imminent that it is literally causally provable and within a relative short period of time likely to happen?

Administrator Whitman. Again, that is something that we will probably be working out as the legislation is implemented. But my feeling is that it is in fact the latter, that we have to see imminent threat to human health or the environment. It has to be something documented, not something that might potentially occur sometime in the future given a certain set of circumstances.

I think it is important to remember that the provision here in the legislation calls for very substantive recordkeeping. There is a requirement for full disclosure, thorough site assessment is part of the process that is required, and a conscientious remedial selection and approach. So it makes it highly likely that this reopener would not have to be used except in cases where there is really documented current threat.